

THE WHITE HOUSE

WASHINGTON

January 6, 2004

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: ANDREW H. CARD, JR. *Andrew H. Card Jr.*
ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF

SUBJECT: Policy on Section 208(b)(1) Waivers with Respect to Negotiations for Post-Government Employment

Effective immediately, this memorandum establishes a new Administration policy concerning waivers for senior Administration appointees who intend to negotiate for outside employment.

The President is committed to the highest standards of ethical conduct, including avoiding financial conflicts of interest. One of the President's first acts after his inauguration was to sign a memorandum to the heads of executive departments and agencies, admonishing that "Everyone who enters into public service for the United States has a duty to the American people to maintain the highest standards of integrity in Government." Compliance with the highest standards in connection with negotiations for post-Government employment is a particularly important aspect of that duty.

When a Presidential appointee confirmed by the Senate intends to negotiate outside employment and agency ethics advisors contemplate granting a waiver of a criminal conflict of interest law to enable the appointee to proceed, serious Administration policy interests arise. These interests are not just technical and legal considerations, but also involve a balancing of the individual's need for the waiver in order to seek post-Government employment against the propriety of allowing one of our most senior Administration officials to take action on a matter where his loyalty to the Government is subject to question. *To ensure these policy interests are completely considered, effective immediately, agency personnel are prohibited from granting waivers under 18 U.S.C. 208(b)(1) to Senate confirmed Presidential appointees for the purpose of negotiating for outside employment unless agency personnel have first consulted with the Office of the Counsel to the President.*

Our most senior Presidential appointees deserve the protection afforded by consultation with the White House. White House officials have an administration-wide perspective and often know relevant facts unavailable to agency personnel; thus, they can be of tangible assistance when consulted. The decision to grant a waiver also involves a balancing test. The fulcrum of that balance is a determination of whether or not the appointee's financial interest is "so substantial as to affect the integrity of the appointee's services to the Government." See 5 C.F.R. § 2640.301(a). Because a senior Presidential appointee may be called upon to advise the White House, it is appropriate that White House personnel have the opportunity to assess the substantiality of the senior appointee's financial interest and how it affects the integrity of the appointee's service to the President.

In addition, I am directing each of you to examine existing delegations of the authority to grant such waivers to ensure that officials at an appropriate level of seniority and responsibility are involved in the decision making process. Many agencies over time have delegated the authority to issue waivers far beneath the agency head level. Some of these delegations predate current Administration appointees and are known only to agency ethics personnel. The existence of such unexamined delegations leads to a risk that an agency head would unwittingly rely on advice from an agency official that is tainted by a conflict of interest—advice lawfully permitted only because another agency employee granted a waiver to the agency official. A further disadvantage of such a delegation is that a subordinate may feel constrained to provide a waiver and discouraged from advising against one. Please take these and other pertinent considerations into account as you examine the wisdom and propriety of existing delegations.